1894-053 Chancery Causes: J. B. F. Mills &c vs Southwest Virginia Mineral Land Co]
Lee Co.

Slemp, Gerow, Ruine

CA-Debt
T-Property

To the Honorable H.S.K.Morrison, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining, your orators, J.B.F.Mills and C.Slemp, would respectfully represent and show unto your honor,

That on the 20th day of June, 1887, the Southwest Virginia Mineral Land Company a corporation existing under and by virtue of the laws of Virginia, made, executed and delivered to your Orators, its certain promissory note, or bond, the date of which is the day and year aforesaid, by which it promised to pay your orators the sum of $504.00 when and not until the title to a certain 63 acre tract, part of a tract conveyed by your orators to said Company by deed of June 28th 1887 has been perfected and a general warranty deed has been made for this tract by your orators, said note not to bear interest. Said note is herewith filed as part hereof marked "A".

Your orators will further show your honor that they have perfected the title to the said 63 acres of land in said note mentioned, and they have made executed and acknowledged a deed to the same with covenants of general warranty conveying said land to the said Southwest Virginia Mineral La nd Company, which deed is herewith filed as an escrow marked "B" to be delivered to said Company upon payment by them of said sum of $504.00 aforesaid.

Your orator will further show your honor that on the 28th day of June 1887 they sold and conveyed to the said Southwest Virginia Mineral Land Company a tract of land situated in Lee County containing two hindred and forty acres, the title to 63 a acres of which was adversely claimed by others. This 63 acres is the same 63 acres for which said note or bond aforesaid was executed. In said deed your orators reserved a lien for the unpaid purchase money. A copy of which last named deed properly certified is herewith filed as part hereof marked "C".

Your orator will further show your honor that no part of said sum of $504.00 aforesaid has been paid to them and the same and every part thereof is now due and owing to them.

Now the object of this bill is to have specifically execu-

~~ted said contract~~

ted said contract, and to collect said sum of $504.00 yet due to them on said land. And being without adequate remedy at law they pray your honor's court of chancery to take cognisance of their cause, and to grant the proper relief. To this end they make the Southwest Virginia Mineral Land Company, a corporation organized and existing under the laws of Virginia, the party defendant to this bill, and they pray that it be required to answer the same, and that upon a final hearing that said Company be required to pay to your orators the said sum of $504.00, and failing to do so within a reasonable time that said tract of land be sold or enough thereof as may be necessary to pay said debt, interest and costs of this suit, be sold for that purpose. And if in anywise mistaken in their special prayer, then they pray for all general relief. May spa. issue directed &c.

Duncan & Hyatt, p.q

To Novr Term 1896

C ~~50~~
S ~~15.00~~
A ~~6.00~~
Depo ~~5.00~~
~~Estimate~~
~~$34.53~~

Pltffs costs
To Novr Term 1896
C 13.19
S 50
atty 15.00
Depos. 6.00
$~~2~~ 57
7.48
6.0

12.8
C 13.75
C 13.19
S 50
S 50
atty 15.00
atty 15.00
N P 6.00
N P 6.00
$34.69
357

1st February Rules | 4

J.B.F.Mills and C.Slemp

vs. Bill in Chancery.

S.West Va. Min.Land Company.

Duncan & Hyatt, p. q.

Filed Feby the 5th 1894
A.B. Munsey Clerk

1894 1st Feby Rules
" Bill filed Spa Ex'd
and Decree Nisi
" 2d Feby Rules D. N. Conf'd
& Cause Set for hearing
by Plaintiff

396
50

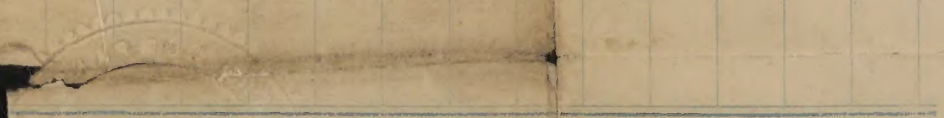
Norfolk Va June 20, 1887

The South West Virginia Mineral Land Company hereby promises to pay to the order of J. B. F. Mills and L. G. Slemp the sum of $604.00, when and not until the title to a certain 63 acre tract, part of a tract conveyed by said Mills & Slemp to said Company by deed of June 28, 1887, has been perfected and a general warranty deed has been made for this tract by said Mills & Slemp to said company. This note not to bear interest.

Southwest Virginia
Mineral Land Company
by Barton Myers
President,

L. H. Shields
Secretary.

"A"



Lee Circuit Court

The Southwest Va Mineral Land Company,

ads

J.B. F. Wells et al

In Chancery

The separate demurrer and answer of the Southwest Va Mineral Land Co. to a bill exhibited against it by J.B. F. Wells & others in your honor's said court of chancery in the above styled cause.

For demurrer respondent says the plaintiffs said bill is not sufficient in law, whereof it prays judgment.

But desiring further or other answer be required, respondent answering says.

First. Plaintiffs' exhibit "B" filed with their bill recites that the land in question was bought by deed dated June 20th 1887, from Jas F. Jones and Mary E. Jones, his wife. Respondent herewith files a certified copy of said last mentioned deed marked "A" which it prays to be treated as a part hereof. From an inspection of which your honor will see that said Jones and wife retained a vendor's lien on this land for unpaid purchase money due from the plaintiffs herein

to them. The plaintiffs bill does not allege that this lien has been released, and as a matter of fact it still subsists and there is due from the plaintiffs herein to said Jones & wife a large sum of money on this land. Your respondent is advised that from that said Jones and wife are necessary parties to this suit, & it prays that these proceedings be stopped until they are made parties hereto.

Second. It will be seen from Plffs Ex "B" that it was the duty of Pltffs to perfect this title. If there should be any doubt about the proper interpretation of the instrument, it was removed by subsequent parol agreement whereby Pltffs alone, or with the assistance of Jones & wife, (your respondent is not fully informed as to the arrangement between said parties) agreed to perfect it, & they employed counsel, & undertook the court costs & other expenses. It was also their legal duty, & this was ratified by their subsequent parol agreement, also, to protect & be responsi-

sible for the standing timber on this land, or any other substance thereon - Respondent's Contract was that it should have the land with all thereon as of the day the contract was made - June 20th 1887 - Subsequent thereto & before the pltffs perfected said title & put respondent in possession of the land, the Ward heirs, also claimed it adversely, went on the land and denuded it of all the valuable timber, worth at least from $250.00 to $400.00 & perhaps more, without any attempt on the part of pltffs to stop them. At the time this timber trespass was in progress, respondent warned pltffs to take steps necessary to stop it, authorizing any suit or proceeding that might be necessary, to be brought in the name of respondent, and stating that it would look to pltffs for any damage done to said land in case they should afterwards perfect the title and call on respondent to pay the money him received - The land has little or no value except for its timber - it bears no minerals, is too

rough and poor for agriculture, and is altogether wild land. There is no cleared land in any part of this 63 acres, nor of the 284 acre tract of which this is a part, and no house or building of any kind thereon. Respondent therefore never had any actual possession of said land, and would not assume constructive possession until pltffs had complied with their contract & perfected the title.

After the proceedings perfecting this title respondent notified plaintiffs that it was ready & willing to take the land and pay for it subject to rebate for the timber taken therefrom. Plaintiffs agreed to allow such rebate, but claimed that Jones & wife should lose a part thereof, and further a question arose as to the value of the timber taken. It was agreed to arbitrate the value of said timber, and the arbitrators fixed it at what your respondent is constrained to believe the shamefully low & inadequate sum of $15 1/3 XX

Still, respondent having entered into the agreement in good faith was ready & willing to stand by the same, & notified pltffs that it would pay the said sum & sundries less the $15.13 and this the pltffs agreed to accept and respondent did pay them on Nov 27th 1893 the payment of $43.80 as is shown by the receipted draft filed herewith marked "3" which is prayed to be treated as a part hereof, and further respondent at various other times prior thereto made payments on account of the expenses incurred in ascertaining the said damages, & in arbitrating this matter, all of which amounted to the sum of $23.02/xx

The facts and circumstances hereinbefore set out are clearly shown by the answers of the pltffs in this cause who are defts in another cause in this honorable said court of Chancery in the suit of Mary E. Jones vs J.B.F. Wells et al, now depending in this court, and in the deposition of C. Slemp, one of the pltffs

herein, filed in said cause of Mary E. Jones vs J. B. F. Allis et al on March 4th 1894, all of which are prayed to be read and considered as a part hereof.

Throughout all the proceedings of this arbitration the contract & agreement by the pltffs herein with respondent was clear & explicit that the sum found by the arbitrators should be placed as a credit on said note hereinsued on, & all the necessary release papers & confirmatory papers were drawn up & put in the hands of pltffs to be signed, and respondent was waiting for them to be delivered, when notice of this suit was served on it, being the first intimation it had that pltffs wanted & refused to carry out their agreement.

Third - If for any reason your honor should hold that the aforsaid agreement is not binding on pltffs, then respondent insists on its right to open up the question of damages and to prove that the actual damage is far greater than that allowed

by the arbitrators, and to this end prays that a commission be appointed, or an issue out of chancery directed, to ascertain the actual damage to said land & that this sum be placed on said note as a credit, in addition to the credit payments already set out.

Respondent was informed that Mary E. & Jas F. Jones, agreed with the pltffs herein to abide by the decision of the arbitrators & to allow as a credit on the note due said Mary E. Jones by said pltffs the proper & just proportion that her said note should bear of this loss, but that they have sought to violate their solemn agreement & have brought the suit herein before refund to of Mary E. Jones vs J. B. F. Wells chal. But this cannot affect the agreement of pltffs with respondent.

Respondent further calls attention to the fact that until the said pltffs have paid off said Jones & obtained a release of the aforesaid lien, the title is not perfected & they cannot maintain this suit. Wherefore having answered &c. respondent prays to be hence dismissed &c.

R. F. Jones
p. d.

J.B.T. Wells et al

vs

Answer

of

Sanderson et al Defts

Filed in open Court
March the 12th 1894
A B Munsey Clk

Lee Circuit Court.

J. B. F. Miller etal
~~G. Slemp, et al.~~, Plaintiff.

v. Final Order.

Southwest Virginia
Mineral Land Co., Defendant.

It appearing that the defendant has fully paid the decretal judgment heretofore rendered against it in this cause, and has paid the costs of suit, and nothing further remaining to be done herein, it is ordered that this cause be strikken from the docket.

~~C. Stamp et al~~

J. B. 13 F. Meigs et al

v.

Final Order

S. W. Va. Mineral Land Co.

Enter this 1st day of June

Ent. on C.O.B. 7. P. 230.

Mary E. Jones
vs
J. B. F. Wells et al

Chancery

Lane
vs
Lane

Chancery

J B. F. Wells et al
vs
Southwest Va Mining Land Co.

Chancery

To the Honorable W. F. Miller Judge of the Circuit Court of Lee County:

As required by the decree of this court rendered in the above styled causes on June 16th 1892, the undersigned Special Commissioner begs leave to report that the deeds of release required to be made by Mary E. Jones & Jas F. Jones her husband & to be delivered to the defendant, the Southwest Va Mining Land Co. upon payment of the remainder of purchase money, have not been made and delivered as required. Your Commissioner

understands that Mrs Jones has signed & acknowledged the release as required, but that her husband Jas F. Jones refuses to do so. Your Commissioner as attorney for said Co. has applied to Mrs Jones to execute such release, but he refuses to do so as to the 25 Tons in question. The said Company has paid only 1100^{00} on the ~~debt~~ sums owed against it, but your commissioner is informed that it is ready to pay the balance when the matter of release is settled.

Respectfully submitted

Nov 14-1894

R. T. Lewis
Spec Com^{r}

Mary E. Jones
vs
Wm. F. Mills et al

Same
vs
Same

J. W. F. Mills exr
vs
A. W. Va Min Land Co

Received & filed
Nov 14 - 1894
A. B. Thomas
Clerk

Virginia. Lee Circuit Court.

Southwest Virginia Mineral Land Company

vs } In Chancery

Nelson Lunsford et al

Upon motion E. W. R. Ewing is appointed guardian ad litem for Lila M. Ward Melvin K. Ward, Dollie M. Ward and Willie Kate Ward, infant defendants in this cause, and upon like motion leave is granted to the said E. W. R. Ewing to file the answer of the said infants by their said guardian ad litem, which is accordingly done, and this coming on this the 11th day of March 1893 to be heard upon the plaintiff's bill of complaints, and exhibits filed therewith, the answer of the said infant defendants by their said guardian ad litem, & the joint and separate answer of defendants Burton Mayes and Jas W. Gibson and exhibit filed therewith and general replication to said answers, was argued by counsel; Upon consideration whereof, it appearing to the court that all the defendants

hereto have been duly summoned by ~~service of~~ personal service of process, and all except those hereinbefore mentioned, having failed to appear to plead answer or demur, the bill is taken for confessed as to them, ~~whereupon it is adjudged ordered and decreed that~~ and it appearing that defendants Myers and Larson have executed a deed in due form of law in which their wives have joined, duly acknowledged for record, conveying to Plaintiff the tract of land mentioned in Plaintiff's "Exhibit No 2", it is ordered that this cause be dismissed as to said Myers & Larson, and it is further adjudged, ordered and decreed that the plaintiff be quited in the title and possession of the land in dispute, as described in the bill and proceedings, but more particularly described in Plaintiffs "exhibit No 12" filed with its bill to wit: Beginning at a stake where the east line of the tract conveyed June 28th 1887 by J. B. F. Mills and others to the Southwest

Virginia Mineral Land Company intersects the back line of the land belonging to the heirs of Saml Ward, deceased, known as the Roach farm, thence S. 67 W. 225 poles to a stake, thence S. 35 E. 76 poles to a stake on the line of the original B. F. Haheen 2000 acre tract, thence with said line N. 49 E. 164 poles to a rock in Lovelady Creek, corner to the tract conveyed June 28th 1887 by J. B. F. Mills & others to the Southwest Virginia Mineral Land Company, said line passing at 26 poles a maple & chestnut on the South side of a spur, corner to said tract, thence with the line of said last mentioned tract due north to the beginning, containing 87 1/4 acres, more or less - And that it hold said land by title firm and stable and free from any claim, demand or interference of the defendants in this cause, or any of them, and further that all conveyances of said land, whether in fee simple or in trust, made by the defendants herein, and in the bill and proceedings mentioned, adverse to the title of the plaintiff, be and the same are hereby declared to be null and of no effect, and are to be cancelled and rescinded. So far as they

affect the said land in dispute.
The plaintiff recover its costs in this behalf expended from the defendants Nelson & Katherine and John Lunsford and L. D. Ward, administrator of the estate of Wm A. J. Ward, deceased, x
Leave is granted the plaintiff to withdraw the deed from Barton Myers & others filed as "exhibit A" with the answer of defendants Myers & Gerow, from the papers in this cause for recordation, and a copy of this decree shall be delivered to the Clerk of the Lee County Court to be recorded in the book in which deeds are recorded, & to be indexed as though it were a deed from the defendants herein to the plaintiff. And nothing remaining to be done in this cause it is ordered that it be stricken from the docket.

x But defendants Myers & Gerow shall pay the costs incurred as to them in the suit.

Virginia Lee County to wit:
In the office of the clerk of the said county the 13th day of March 1893. the foregoing decree was this day presented and admitted to record.
Teste John R. Gibson Clerk.

S.W. Va. Min Land Co.
vs
Nelson Lunsford etc.
Decree
Entered in Chy O.B. p 456 & 457 March 11/93
J. H. S. Hyatt Clk.

Enter this decree
H. S. K.
March 11th 1893

Recorded in Deed Book No 29 P. 232
J. R. Gibson clerk.

Printed and Sold by West, Johnston & Co.

NOTICE TO TAKE DEPOSITIONS.

To C. Stump & J. B. F. Mills,

Take Notice, That we shall, on the 10th day of May 1894, at the office of R. T. Irvine in the town of Big Stone Gap Va between the hours of 6, A M. and 6, P. M. of that day, proceed to take the depositions of Jas M. Crow and others, to be read as evidence in our behalf in a certain cause now pending in the Circuit Court of the County of Lee wherein you are plffs and we are deft and if from any cause the taking of the said depositions be not commenced on that day, or, if commenced, be not concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place, and between the same hours, until the same shall be completed.

Respectfully yours, Southwest Va Improvement Co

by

R. T. Irvine atty

I accept the legal service
of the within notice this the
3rd day of May 1894 -

C. Stem

J. L. [illegible]

Printed and Sold by West, Johnston & Co.

NOTICE TO TAKE DEPOSITIONS.

To Wm E Jones

Take Notice, That we shall, on the 10th day of May 1844, at the office of R. T. Irvine in the Town of Big Stone Gap Va between the hours of 6, A M. and 6, P. M. of that day, proceed to take the depositions of Jas. M. Greene and others, to be read as evidence in our behalf in a certain cause now pending in the Circuit Court of the County of Lee, Va. wherein you are plffs and we are defts and if from any cause the taking of the said depositions be not commenced on that day, or, if commenced, be not concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place, and between the same hours, until the same shall be completed.

Respectfully yours, Dan Thurston Va Mineral Land Co

by

R. T. Irvine Atty

Legal service of
the within notice
is hereby accepted
this the 3rd day of
May. 1894

Mary B Jones

The Depositions of James W.Gerow and

taken before me, H.C. McDowell Junior, a notary public in and for the county of Wise, on May 10th 1894 at the office of R.T.Irvine in the town of Big Stone Gap,Virginia,between the hours of 6 A.M. and 6 P.M., to be read as evidence in behalf of The South West Virginia Mineral Land Company in 3 certain causes now pending in the circuit court of Lee county, Virginia, of Mary E.Jones vs. J.B.F.Mills et al, same vs. same, and J.B.F.Mills et al vs. The South West Virginia Mineral Land Company, pursuent to the notice hereto anexed.

These depositions are, by consent of parties, taken before H.C.McDowell Junior, N.P., who is also counsel for J.B.F.Mills and by like consent, they are to be taken in shorthand and afterwards transcribed and certified.

PRESENT R.T.Irvine, attorney for The South West Virginia Mineral Land Company, C.Slemp, one of the parties in the above causes, H.C.McDowell Junior, attorney for J.B.F.Mills, and C.H.Jones, attorney for Mary E.Jones.

James W.Gerow, a witness of lawfull age, being first duly sworn, deposes as follows:-

Q. 1:- Please state your name, age, occupation, and place of residence.

A:- James W.Gerow; age 40; residence Glasgow Virginia; occupation General Manager of The South West Virginia Mineral Land Company and President of the Glasgow Development Company.

Q. 2:- Are you the James W.Gerow mentioned in the proceedings in these causes and the cause of South West Virginia Mineral Land Company vs. Nelson Lunsford et al?

A:- I am.

Q. 3:-

I will ask you now, Capt. Gerow, to state consecutively and fully all the facts and circumstances connected with this transaction from begining to end as fully as you can.

A:- Some time in June 1887 Mr. Barton Myers and I bought from Messrs. J.B.F.Mills and Campbell Slemp two tracts of land on Wallens Ridge and near Lovelady Gap. The deed to one tract, known as the Wyatt tract, was made to Mr. Myers and myself. The deed to the other tract, known as the Jones tract, was made to The South West Virginia Mineral Land Company. The Wyatt tract was subsequently conveyed by Mr. Myers and myself to The South West Virginia Mineral Land Company. On both these tracts there was an overlap in dispute between the Ward family and Mills' and Slemp's vendors and it was agreed between Messrs. Mills and Slemp, of the one part, and Mr. Myers and myself, of the other part, that Messrs. Mills and Slemp should first perfect the title, if possible, to these overlaps before Mr. Myers and myself were to accept and pay for them. The matter remained in abeyance for several years, although generaly when I visited Big Stone Gap, which would average about twice a year, I would call the attention of Messrs. Mills and Slemp to the fact that no effort had been made by them to perfect these titles and requested them to attend to the matter. It was finally reported to me that timber was being cut from these overlaps and I instructed our Company's attorney, Mr. R.T.Irvine, to notify Messrs. Mills and Slemp that they would be held responsible for timber that was being taken and had been taken from the property. I was afterwards advised by Mr. Irvine that he had given Messrs.

Mills and Slemp such notice. About two years ago, during a conversation with Mr. J.B.F.Mills on the subject of his perfecting these titles, he told me that he had been advised by his attorney that it would be necessary for any suit brought to perfect the titles to be in the name of The South West Virginia Mineral Land Company and he then requested that I give permission for him to bring suit in the name of said Company, saying that all costs and charges of such suit or suits would be paid by him and Mr. Slemp. I defered giving permission requested until after I had consulted the Company's attorney, Mr. Irvine, and on being advised by him that it was proper for the Company to give such permission, I saw Mr. Mills and gave him the permission he requested. The matter was alowed to stand for some time after that and finally, possibly about a year ago, suit was brought by Messrs. Mills and Slemp in the name of my Company and a decree obtained in their favor, the costs of said suit I am advised having since been paid by them. Shortly after the decree was obtained prefecting these titles, Messrs. Mills and Slemp requested a settlement from my Company for these tracts which had been in dispute. My Company refused to settle, unless a credit was alowed for the amount of timber which had been cut and removed from the property during the time that the title to the land was in dispute. There were several conferences between Messrs. Mills and Slemp, of the one part, and Mr. Irvine and myself, of the other part, regarding this matter and it was finally agreed between the parties the a credit should be allowed to my Company on account of timber removed, the amount of which credit to be determined by arbitration, the board of arbitrators to be chosen in the usual manner who were to determine the amount of timber removed

from the property and its value, and their decission was to establish the credit we were entitled to.

This board was appointed, the ground was gone over where the timber had been cut, the number of trees which had been removed was ascertained, and their value determined by the board, 25 trees which had been reserved in the deed from Messrs. Mills and Slemp to my Company being first deducted from the number which had been removed from the property and the value of only such trees in excess of that number being determined. My Company regarded the amount of the award as inadequate to cover the damage done, but accepted it and made a settlement under the award of the amount due for the overlap or disputed part of the Wyatt tract. My Company also agreed to stand by the award and settle for the overlap or disputed part of the Jones tract and it was only on yesterday that I learned that Messrs. Mills and Slemp did not want to comply with the arbitrators award so far as it applies to the Jones overlap.

The parties, J.B.F.Mills and Slemp by counsel object to the following portions of the above answer and for the causes stated: the statement of the witness as to the parole agreement, if any there was, preceeding the deed from Mills and Slemp to said Land Company is objected to because incompetent. Also the witness' statement as to the ~~estimation~~ construction which he puts upon the ~~ridge~~ Coy tract, evidenced by a deed from Mills to the said Company, is objected to because an attempt to vary a written contract by parole evidence. The statement that the said Company directed its attorney to notify Mills and Slemp that they wuold be held responsible for timber taken from the disputed land and the statement that the witness was advised by the Company's attorney that he had given such notice are

objected to, the first because immaterial, and the last because hearsay. The statement that witness was advised that Mills and Slemp had paid the cost of the litigation against the Ward family is objected to because hearsay. H.C.McDowell,Atty.

Q. 4:- Please state whether or not you were General Manager of the Company during the whole of the period mentioned and what part of its business you transacted.

A:- After the organization of my Company, its business was almost exclusively managed by Mr. Myers and myself and ever since its organization I have been the Company's agent or general manager. Such business as would be necessary in connection with the matter under discussion was generaly left to my jurisdiction.

Q. 5:- I show you a copy of the bill in the cause of The South West Virginia Mineral Land Company vs. Nelson Lunsford et al and ask you whether the statements of that bill were meant to be those of your Company or merely the sanction of your Company of the statements of the other parties to these suits.

This is objected to by Mills and Slemp because leading, because immaterial, and because an attempt to vary a writing by parole evidence. McDowell,Atty.

A:- The statements of that bill are not the statements of my Company, but the statements of Messrs. Mills and Slemp who simply had authority from me to bring the suit in the name of my Company.

This answer is objected to by Mills and Slemp because by reason of the alegations made in the said bill, the same being matter of record, The South West Virginia Mineral Land Company is estoped from denying that they were the statements of the

said Mineral Land Company or from denying the truth of said statements. McDowell, Atty.

Q. 6:- Please give the facts regarding the posession of this disputed strip.

A:- The facts are that this strip was not in the possession of my Company nor did my Company ever exercise any act of posession over it. The land is mountainous and not arable and was unocupied.

Mills and Slemp object to this answer because immaterial also because the legal and equitable title having vested in said Company, and it alone having the right to the posession of said land, can not take advantage of its own default, if it saw fit not to hold and keep in actual as well as constructive posession of said land. McDowell,Atty.

Q. 7:- Please state whether or not the refusal of your Company to assume posession of this land was open and notorious and known to Mills and Slemp.

Question and answer objected to because it assumes that it has not been proven and because immaterial. McDowell,Atty.

A:- My Company's refusal to assume posession of this land was open and notorious and well known and particularly to Messrs. Mills and Slemp. The notes which were given by my Company for these overlaps were drawn not to be due or payable until Messrs. Mills and Slemp had perfected the title and were also not to bear interest. The fact that we were not in posession making it proper that the notes should not bear interest.

This answer is objected to; first, because it is not the best evidence, the note filed with the bill of Slemp and Mills against the Mineral Land Company being the best evidence of

its contents, and the witness' statement that the note was not to bear interest because his Company was not in posession is objected to as being a mere conclusion. McDowell Atty.

Q. 8:- Please state the facts in in reference to cleared land on this and also on the adjoining Wyatt tract.

A:- I knew that there was a small quantity of cleared land on these two tracts, which cleared land I understood was outside the overlaps in dispute and which my Company alowed to be occupied by Mr. Meridith and to be cultivated by him; but my understanding was that this land was on that portion of the tracts outside of the disputed overlaps. I do not know positively that the cleared strip extends to both tracts, but my impression is that it does.

Q. 9:- Please state, if you recall it, any special occasion at which the other parties to these suits agreed that the value of the timber taken should go as a credit on the notes against your Company and, if on such occasion, when it was and the circumstances.

A:- I do recall such occasion which took place in this office, I think during April 1893, when Messrs. Mills and Slemp, Mr. Wyatt, Mr. Irvine, and myself were present. It was then agreed between us that the value of the timber which had been removed from these overlaps should be determined in the manner stated in the former part of my deposition, and that such value, when ascertained, should be alowed as a credit on our notes. The manner in which the value of the timber was to be determined was by arbitration. Three arbitraters were to be chosen in the usual way who were to find out how much timber had been removed by an examination of the property, and who were to determine its value

which valuation it was agreed between us should be alowed as a credit on my Company(s notes. The examination was made and the value of the timber agreed upon by the three arbitrators, who had been previously selected, and their report was made showing that $151.13 worth of timber had been removed from the property, exclusive of 25 large whiteoak trees which been reserved in the deed of Messrs. Mills and Slemp. My Company accepted their report, although considering it rather lower than the value of the timber which had been taken and some time afterwards we settled their note for the overlap on the Wyatt tract in accordance with the arbitrators' award.

Q. 10:- Please state whether or not at that conference in April '93, or at any other time,there was an objection made by your Company to making a settlement by reason of any other cloud on this title or suit pending or threatening and, if so, give the particulars.

A:- Yes, there was an objection made by my Company to settleing with Messrs. Mills and Slemp on account of a suit which had been brought by Mrs. Barbara Ritchie, who had made an adverse claim against the land in question. My Company at first objected to pay at all until this suit of Mrs. Barbara Ritchie had been decided, but it finally waived the point and settled the note due for the overlap on the Wyatt tract and was ready and willing to settle the note due for the overlap on the Jones tract in accordance with the terms of the award of the arbitrators for timber removed.

The above answer is objected to by Mills and Slemp because immaterial and irrelevant, the same not having been relied on in the pleadings in these causes, and for the further reason that there was no right on the part of the said Land Company to withhold the payment because of the suit of Barbara Ritchie,

the liability of said Mills and Slemp depending entirely on the covenants of their deed to said Land Company and they being liable only in the event of an actual eviction. McDowell, Atty.

Q. 11:- Please state whether or not the waiving of this matter was a part of and carrying out your agreement of compromise in reference to the timber.

A:- It was first agreed that the value of the timber should be ascertained by arbitration and the valuation alowed as a credit on our note; my Company not agreeing at that time, however, to settle until the Barbara Ritchie suit was decided. But afterwards my Company waived the point regarding the Barbara Ritchie suit and agreed to settle without reference to it. It was fully understood between all the parties when the agreement of arbitration was entered into that it was only for the purpose of ascertaining the value of the timber which was to be applied as a credit on our notes and that my Company still reserved to itself any rights it might have in consequence of a suit with Barbara Ritchie.

This answer is objected to for reasons above stated.

Q. 12:- Please state why you consider the value of the timber as agreed on by the arbitrators as inadequate.

A:- I considered it inadequate because at that time similar timber was being sold at a higher price and also because I was offered a higher price for similar timber of the same tract, which higher price I refused to accept.

This answer is objected to because, if the agreement refered to by the witness was and is a binding agreement, the value of the timber was fixed by the arbitrators and evidence of the witness' opinion of its value is immaterial. If

If there was no agreement, then the answer is objected to because Mills and Slemp are not liable to The Mineral Land Company for the value of the timber taken, unless it be proved that the timber was taken by due process of law under a title superior to that conveyed by them to The Mineral Land Company, or unless it was taken by persons claiming by, through, or under Mills and Slemp; and, if they are not liable, evidence as to its value is immaterial.

Q. 13:- Please state whether or not your Company was ready and willing to settle without suit in this matter upon the execution of proper releases and upon the giving of the aforesaid credits.

A:- It was.

CROSS EXAMINATION.

X.Q. 1:- You have said more than once in your examination in cheif that Mills and Slemp agreed that your Company should have credit on the $504.00 note for the value of the timber as fixed by the arbitrators. Now, is it not a fact that they agreed to give this credit on condition that Mary E. Jones should agree to share the loss in accordance with their and her respective interests, that is that Mrs. Jones should give them credit on their note to her in proper proportion?

A:- No; they did not agree to give the credit on that condition, the agreement being simply that the valuation of the timber was to be fixed by the board of arbitrators and that the amount of such valuation was to be allowed as a credit on our notes. The case of the overlap on the Jones tract was not made seperate and distinct from that on the Wyatt tract and nothing was said that implied that the credit on my Company's note was to be contingent on the credit being made

~~Colmans note~~

by Mrs. Jones to them.

X.Q. 2:- Is it not a fact that you have what was said and done in your presence confused with what was said and done after you left here at a time when Mr. Irvine was representing you and probably wrote to you as to what had been done? To make myself more fully understood, I will ask you if it is not a fact that the agreement to appoint arbitrators and the agreement as to the credit was made on the part of Mr. Irvine on the part of your Company after you had left here?

A:- No; my mind is not confused with regard to these matters, nor is it a fact that the agreement to estimate the value of the timber removed from these overlaps, and that the amount fixed should be alowed as a credit on our notes, was made by Mr. Irvine after my departure. My mind is very clear on these points for the reason that within the last 6 hours I have carefully gone over all the correspondance between myself and Mr. Irvine, thereby refreshing my memory and preventing me from falling into any such error as you suggest.

X.Q. 3:- What consideration, if any, was there moving from your Company to Mills and Slemp to induce them to give this credit?

A:- I know of no consideration further than that my Company positively refused to settle, unless the proper credit was allowed it for the timber which had been removed, and I suppowed Messrs. Mills and Slemp were actuated by this fact and bythe fact that such a credit was properly due to it ~~them.~~

X.Q. 4:- Was not the real consideration their desire to avoid the expense in time and money and the worry of litigation with your Company? And now that they have had to undergo this expence and worry, has not the consideration for the

agreement they made(whether absolute, as you think it was, or conditional, as they think it was)failed?

A:- No; I do not think that was the real consideration, for they have brought this suit without any failure on the part of my Company to stand up to the decission of the arbitrators under that agreement. I, therefore, do not think the real consideration was their desire to avoid the expense and worry of litigation.

X.Q. 5:- From letters received by you from Mr. Irvine or otherwise, do you not know that the reason Mills and Slemp refused to give the credit was because Mrs. Jones refused to pro rate the loss with them?

A:- No; I did not know this fact until I was informed of it by you on yesterday.

X.Q. 6:- Was not the bill in the chancery suit of South West Virginia Mineral Land Company against Lunsford and others refered to in your examination in cheif drawn by Mr. Irvine? - and was he not attorney for your Company?

A:- I am now advised that it was drawn by Mr. Irvine, but I never saw the bill or a copy of it or knew its contents fully until to-day. The connection between Mr. Irvine's employment in this case and my Company is as follows:- This matter had draged along badly and when I was in Big Stone Gap on one occasion I talked over this case with Messrs. Mills and Slempand afterwards I told Mr. Irvine to assist the counsel of Mills and Slemp and my Company would pay him a reasonable fee for his services. My understanding was that Messrs. Bullitt & McDowell had been employed and Mr. Irvine was to assist them. It was afterwards agreed by my Company that Mr. Irvine should take the case alone for Messrs. Mills and Slemp, who were to

pay him for his services in addition to the fee that our Company was to pay him for assisting in the case, but it was all the while understood and agreed that my Company should in no way be liable for costs or otherwise interested in the suit than to give to Mills and Slemp the use of its name and pay the fee which it had originally agreed to pay Mr. Irvine.

X.Q. 7:- You stated in your examination in cheif that your Company had never been in posession of the 63 acres in dispute. Now it appears from the bill in the case of your Company against Lunsford et al that your Company alledges that it was at the time of the filing of the bill in posession of said land. It would seem, therefore, that the position of your Company is that it can alledge of record that it is in posession for the purpose of one suit and then for the purpose of the other suit prove that it was not in posession: am I right?

A:- I do not think you are. The declarations contained in that bill are the declarations of Messrs. Mills and Slemp who for their own benefit and frofit were alowed to use my Company's name in bringing this suit.

X.Q. 8:- Then your Company alowed Messrs. Mills and Slemp to solemly aledge that it was in posession at that time, did it not?

A:- The matter was left to the Attorney of Messrs. Mills and Slemp and until to-day, ~~and~~ I did not know what were his alegations.

X.Q. 9:- Has not your Company paid taxes on all of the Jones tract since the time of his purchase or shortly thereafter?

A:- My Company has paid all taxes that have ever been

assesed against it and it has paid taxes on the Wyatt and Jones tract, but whether or not the overlaps in dispute were included in the land assesed for taxes I am not prepared to say.

X.Q. 10:- In the lease made to your tenant, Meridith, or in the verbal permision, if such it was, given to him did your Company expressly except the 63 acres disputed tract?

A:- I have never seen that lease and do not know its terms. The arangement was made by my Company's attorney.

X.Q. 11:- Have you not been just imformed by your Company's attorney that when he put Merridith on the land that he did not eccept from the land tenancy the 63 acrestract and that he put him in posession of the whole tract?

A:- Since my last answer, my attorney has informed me that he told Mr. Meridith to go on the tract and that he did not mention that any part of it was to be excepted from his tenancy. This was some three years ago when he did not know there were any disputed overlaps on the tract and he marely told Mr. Merridith to go on the tract on his own responsibility as general attorney for the Company, but without any specific instructions from any of its officers.

X.Q. 12:- Did not Mr. Irvine intend to convey the impression that he put Merridith in posession of the whole tract and told him to hold posession of the whole tract and further that he had authority so to do as general attorney for the Company; and is it not a fact that,as attorney for the Company he did have authority so to do?

These questions are objected to by The South West Virginia Mineral Land Company as hearsay.

A:- The impression that I gained from what Mr. Irvine said was that he put Meridith on the land as a tenant without

excepting any part of it, and it is a fact that Mr. Irvine has authority at any time to do what he thinks is for the best interests of my Company during the absence of its officers from the county or the absence of specific instructions to the contrary. XQ 12a Has your Co given him any specific instructions to the Contrary?

A:- I know of none.

X.Q. 13:- Then, if at the time Mr. Irvine put Meridith in posession of the whole Jones tract as the tenant of your Company in order to hold posession for your Company of all of said tract including the 63 acres in dispute he (Irvine) thought it was in the interest of your Company so to do, he had authority for his action - did he not?

A:- Mr. Irvine knew nothing of the 63 acres in dispute when he put Mr. Meridith on the land as a tenant. Mr. Irvine understands that he has authority to do what he thinks for the best interests of the Company.

X.Q. 14:- This answer is objected to as not responsive to the question and I now ask the witness to answer the question.

A:- I repeat that Mr. Irvine had authority to do anything that he thought for the best interests of my Company. If your question is intended to imply that Mr. Irvine knew of the 63 acre tract in dispute and particularly put Mr. Meridith in posession of that tract, I also repeat that Mr. Irvine knew nothing of their being any dispute on this land.

X.Q. 15:- This claim on the part of your Company that it has never been in possession of the 63 acres in dispute is a comparitively new one, is it not, and one for the purpose of throwing the loss of the timber taken by the Wards on Mills and Slemp or on Mrs. Jones, is it not?

A:- I think it was generaly understood, when the purchase was made from Mills and Slemp, that my Company was not in possession of these overlaps, which understanding is confirmed by the fact that the notes do not carry interest. The question has not been discussed since then, however, until the present controversy has arisen. We consider that our contract with Mills and Slemp to leave the quantity of this timber to the decission of arbitrators, and their agreement to alow it a credit on our notes, and the fact that a settlement has already been made regarding the overlap on the Wyatt tract, under the finding of that arbitration, as a sufficient protection to us for the timber also removed from the Jones overlap. The action of Mills and Slemp in trying to avoid their obligation to abide by ~~that~~ the arbitrator's decission may and probably did induce us to show that we were not in posession of these overlaps.

The above answer is objected to because in a large part a mere conclusion of the witness and as to the balance because totally irresponsive to the question. McDowell, Atty.

X.Q. 16:- I now ask you again if the claim that your Company has not been in posession of the 63 acres is not a new one advanced for the first time on the approach of this present controversy?

A:- There has never been an occasion until this controversy, to refer to this question of posession or non posession and therefore it has never been advanced before.

X.Q. 17:- I n the answer of your Company in these suits it is alledged in effect that your Company has never been in posession of the 63 acre tract. I will now ask you if it is not a fact that previous to this controversy your Company con-

sidered itself in at least constructive posession of the whole of the Jones tract and that it was ready at all times, if need be, on the strength of the posession of your tenants Meridith and Moore and of your constructive posession to alledge and prove that your Company was and had been in actual adverse possession of the whole of said tract?

A:- I do not know exactly the meaning of constructive posession nor do I know how far the actual posession and cultivation of a certain part of a tract of land enables a vendee to prove and maintain his right to the entire tract. I can simply say that my Company has never considered that it would be in posession of these overlaps until the title was made perfect and they were paid for.

This answereis objected to because not responsive to the question asked.

X.Q. 18:- What you mean to say, then, is that as between you and Mills and Slemp you have not been in possesion, but as between you and a possible outside claimant to the land you would have your counsel, if possible, take advantage of the fact that you had been in posession; am I right?

A:- No, you are not right. I have already stated that the suit brought by Messrs. Mills and Slemp was not brought by my Company, but that it merely permited the use of its name at the request of Messrs. Mills and Slemp for the purpose of bringing their suit.

X.Q. 19:- I was not refering in my last question to the case against Lunsford et al, for in that case it appears that your Company employed counsel and also that by its permission a declaration was made of record that it was in posession; but I refer to posession adverse claims on the part of others that

Lunsford or parties to the three suits in which this deposition is to be read, and I now repeat that,if I understand you, correctly,the position you take is that as between you and Mills and Slemp you claim not to have been in posession, but in case your Company was sued in ejectment, for instance under the old Ely patent, you would have your attorney take advantage, if possible, of the posession of your tenants under a tenancy which included the whole Jones tract; would you not?

A:- You are right so far as you say that we do not claim posession of these overlaps as between ourselves and Messrs. Mills and Slemp. What action I would take in the event of adverse claims being set up under the old Ely patent would entirely depend upon the advice of my attorney.

X.Q. 20:- Then, if you were sued in ejectment by claimants under the Ely patent and your attorney advised such a course, you would rely, would you not, if such be the case, on the fact that you have paid taxes on the whole tract and that Meridith, your tenant, took and held posession for your Company of the whole tract?

A:- I would be very apt to be guided by my attorney's advice in the case.

X.Q. 21:- I now ask you to file with your deposition certified copies of the land books in relation to the Jones and Wyatt tracts, showing on what tracts and the acreage thereof your Company is assessed with taxes in Lee county.

A:- I file same, as requested.

REDIRECT EXAMINATION.

Q. 1:- I will ask you, Captain, whether or not your Company were subjected to additional expense because of the ar-

bitration and, if so, what.

Objected to because immaterial. McDowell, Atty.

A:- Yes, my Company agreed to pay and did pay 1/2 the expenses of this arbitration which included the expense of having a surveyor establish the line of these overlaps and the expense of one member of the board of arbitrators going to the overlap and counting the trees which had been cut therefrom and 1/2 of the fee charged by all the other arbitrators for holding their arbitration.

Q. 2:- I will ask you what consideration there was for your Company paying these items.

Objected to because immaterial. McDowell, Atty.

A:- The consideration of getting the title to this property straightened up and getting the credit agreed upon for timber removed therefrom and getting the matter settled generally without litigation.

Q. 3:- I believe you have stated once, but I will ask you in this conection to state again whether or not there was any necessity for this suit to be brought in order to fource your Company to make this payment, if the credit had been alowed, or whether your Company stood ready and willing to make this settlement without suit.

A:- No, there was no necessity for this suit whatever so far as my Company was concerned. It was ready and willing to settle this matter in accordance with its agreement with Messrs. Mills and Slemp and for some time had the money in bank here which our attorney had been directed to use to make that settlement.

The witness not having proved a tender even of the amount which he admits to be due, the above answer is objected to as

irrelevant and immaterial.

Q. 4:- State whether or not the proper releases and the new deed of general waranty contracted for had been tendered your Company prior to the bringing this suit.

Objected to as immaterial.

No, such papers have never been tendered to my Company.

Q. 5:- State whether or not the credit contracted for on account of this timber matter had been prior to the bringing of this suit placed upon the note sued on, or whether it has ever been placed thereon.

A:- No, such a credit has not been placed on that note.

Q. 6:- Please state whether or not your Company notified Messrs. Mills and Slemp that the money was ready and would be paid at any time when the proper credit had been given, release papers and new general waranty deed furnished.

A:- It did.

Q. 7:- You ha ve been asked on cross examination many hyperthetical questions concerning your defenseof the whole of the two tracts of land, to-wit, the Jones and Wyatt tracts including the overlaps. I will ask you whether or not, if ~~the~~ a suit in ejectment ~~and~~ had been brought for these overlaps alone, would your Company have defended such a suit?

A:- No, my Company would not have defended such a suit, but would have notified Messrs. Mills and Slemp and called upon them to defend it. My Company, in making this purchase from Messrs. Mills and Slemp, had no intention of buying a lawsuit and did not consider nor acknowledge posession of thase tracts until the new deed of general waranty, contracted for by Messrs. Mills and Slemp, had been delivered to it.

This answer is objected to as immaterial.

Q. 8:- Did your Company ever attempt to sell timber from these overlaps or did they ever exercise any other visible acts of posession or would it have made such attempts or exercise such acts until the whole matter had been cleared up and the new deed of general waranty given as contracted for?

Objected to because leading and immaterial, and because witness' Company is estoped to deny having been in posession of the land.

A:- No, it did not exercise any such act of posession nor would it have done so until the deed contracted for had been delivered. No, it never has sold or attempted to sell any timber from these overlaps.

Q. 9:- For what is the land embraced in these overlaps chiefly valuable?

A:- For its timber.

Q. 10:- Please state, if you know, what proportion of the value of the timber has been taken from the land by the Ward heirs.

This question and further questions on this line are objected to because utterly immaterial and improper for redirect examination.

A:- I have not made an examination of this land since the timber was cut and do not know what proportion of the timber has been removed from it.

Q. 11:- Please state the amount per acre paid by you for the balance of the Jones tract and the amount contracted to be paid per acre for this overlap.

A:- The amount paid for the balance of this tract was $8.00 per acre and the amount contracted to be paid for this overlap was also $8.00 per acre, our expectation being that

it was to be delivered to us in the same condition as the other part of the tract and in the condition it was then in, when we made the contract.

This answer is objected to for, if the disputed tract was not delivered with the rest of the land, the answer of the witness is an attempt to vary the written contract by evidence of previous or contemporaneous agreement.

Q. 12:- I will ask you how long it has been since this question of bringing suit against the Ward heirs has been actively agitated and agreed on between yourself and Messrs. Mills and Slemp?

A:- As well as I can remember, it was about two years ago that Messrs. Mills and Slemp decided to bring this suit, provided my Company would consent to the suit being brought in its name.

Q. 13:- Is it not a fact, however, that prior to that time you notified them that if, the name of your Company was needed, you would consent to its use in this connection; and, if so, how long before that time?

This question is objected to; first, because leading and second, because immaterial.

A:- I can not recall exactly when my Company first agreed to permit the use of its name in this suit. The question of getting the title to these overlaps straightened has been agitated by my Company from a date very shortly after the purchase was made from Mills and Slemp and it was considerable time after we first began this agitation that they notified me that they wanted to bring the suit in the name of my Company, but I can not state exactly when that time was.

And further this deponent saith not.

Jas. H. Gerrard.

Also the deposition of C.Slemp, taken on behalf of himself and J.B.F.Mills.

PRESENT counsel for all the parties interested.

The witness, being duly sworn, deposes as follows:-

Q. 1:- State your name, age, residence, and ocupation.

A:- My name is C.Slemp;my age is 54 years; occupation farmer; residence Turkey Cove, Lee Co.,Va.

Q. 2:- Please state the facts relative to the conference held between you, Mills, Captain Gerow, and Mr. Irvine in the latters office in April '93.

A:- I can not give the date exactly of the conference held in this room, but it was after the settlement of the suit with the Wards when we claim that the title of the land was perfected. I had learned from Mr. Irvine that Captain Gerow would be here on that day, whatever day it was, and considering the title of the land then perfect, I brought the two notes with me; one for $504.00 and the other for ~~$904~~ 194.00, and demanded payment. To that payment Captain Gerow objected because certain of the timber had been taken from the land for which he said we ought to give him credit on these notes and that Barbara A.Ritchie had instituted suit for an interest in lands over in that section which would probably effect this. I refused to give credit for the amount of the timber unless Jones and Wyatt would give us a like credit for the notes held against us, Mills and Slemp. We differed then as to about what the timber was worth that had been taken off. I had gone over the ground with Mr. Jones and some of the Coomes boys and Mr. Wyatt and made a rough estimate of the amount of the timber and gave to Mr. Gerow my idea that day of the amount as near as I could and added what I thought it was worth.

He thought more, and the question of arbitration then was sprung and finally consumated. The duty of those arbitrators was simply to estimate as nearly as they could the amount and quality of the timber and the value. They did not give their award in dollars and cents, but estimated the oak timber at so much per thousand and gave the amount of feet and the poplar timber at so much a thousand. In the conference mentioned, Captain Gerow and myself differed as to who was responsible for the loss of the timber.

Q. 3:- What, if any, condition was precident to the agreement or even talk of an agreement of giving the Company credit for the value of the timber?

A:- I proposed to give the Company credit for the timber on condition that Jones and Wyatt would give us credit on the same thing.

Q. 4:- What, if any, was the consideration which induced you and Mills to make this conditional agreement?

A:- We wanted to avoid the trouble, expense, and worry of a law suit and so told Captain Gerow that day.

Q. 5:- State whether or not Wyatt and Jones agreed to give you credit in order to reach a settlement with the Company.

A:- Wyatt did on his part which was very small, his proportion being $5.56. Mrs. Jones refused to give us credit, consequently we refused to give the Company credit.

Q. 6:- State whether or not Wyatt was present at the time of the conference in Mr. Irvine's office.

A:- No, sir, he was not present.

Q. 7:- Where was he that day?

A:- I saw him in the morning before I came here at Olinger station on his way to the Crab Orchard to attend the trial

he had there in another case and I told him that I was coming here that day on purpose to get the money on the land from Captain Gerow.

Q. 8:- State whether or not you and Mills were both present during the whole of the conference.

A:- We were, as well as I recollect now.

Q. 9:- In answer to question No. 2, you stated that Captain Gerow urged the pendancy of the Ritchie suit as a reason for his refusal to pay the amount going to you. What became of this objection?

A:- I do not think there was anything said about it when we settled with Wyatt and I ahve not heard anything said about it lately. I supposed they had droped that part of it and agreed not to bring it up any more.

Q. 10:- If I understand you, you and Mills agreed to the arbitration as to the value of the timber on the supposition and on condition that Mrs. Jones and Wyatt would give you the credit for which the Company was contending. Am I right or not?

A:- Yes, sir, you are right. I might state another word in relation to that arbitration. The necessity was to arive at some definite conclusion as to the amount. Captain Gerow was claiming one thing as to the amount and value and I was claiming another and when the amount and value was fixed there was one thing to be settled, and that was the responsibility of the parties, and that never has been settled.

Q.11-What position did you and Mills then take as to the responcibility for this loss?

A:- We took the position that we were not responsible, but that the Land Company was.

Q. 12:- Now turn your attention to the litigation between yourself and Mills and Mrs. Jones and please state what, if any, was her agreement with you as to shareing the expenses of perfecting the title of the disputed land.

A:- We all agreed, Wyatt and Mrs. Jones and myself, to go in jointly and pay in proportion to the money each had in it

Q. 13:- To pay what?

A:- To pay a lawyer fee and the expences of the suit.

Q. 14:- Are you sure her agreement did not relate only to her proportion of the attorney's fee?

A:- I think it related to all the expenses we might be put to in the transaction of the matter and the costs of the settlement with Ward. On this question I might also add that she also agreed to pay her proportional part of the cost of the arbitration. We considered the expenses part of Wyatt, Jones, Slemp, and Mills of that expense to be one-half.

Q. 15:- When did the Mineral Land Company people first make the claim to you that they were not and had not been in posession of the 63 acre overlap of the Jones tract?

A:- I never heard of their claiming that until Captain Gerow said it yesterday.

Q. 16:- State whether or not in any conference held between you and Mr. Irvine relative to the suit against Lunsford and others or at any other time he took the position that his Company had never considered themselves in posession of said overlaps.

Objected to because immaterial.

A:- He never took such position to me.

Q. 17:- Why was it thought necessary to obtain the consent of his Company to use its name in the suit against Luns-

ford and others?

A:- We had conveyed whatever title we had to them because we understood we had no right to bring suit in our own name.

Q. 18:- Is it not a fact that you were informed by Mr. Irvine that such a suit had to be brought by the party in possession, that the bill would have to alledge posession in the plaintiff and that this was the reason why it was necessary to bring the suit in the name of his Company?

A:- That was my understanding from Mr. Irvine and that is the advice I had received from other counsel.

That question and answer is objected to as immaterial.

Q. 19:- Please state whether or not Mrs. Jones was informed of what was to be and had been done in regard to perfecting the title to the 63 acres and what she said to you in regard thereto.

A:- I have had frequent conversations with Mrs. Jones in regard to the perfecting the title to the 63 acres and told her that we would have to bring suit. We regarded it her duty to perfect the title, but Mills and I were willing to help her. After I had had a conversation with Mr. Irvine on the subject, I explained it to her and her husband and she sent him with me and Wyatt to employ Mr. Irvine to bring the suit and our agreement was before Mr. Jones before we left there and with Mr. Irvine that we would pay in proportion to what each party had in the business. After the title was perfected, she came to my house and before the institution of these suits she stated that she was willing to pay her proportionate part of her expenses in perfecting the title as they had agreed, but was not willing to pay for the loss of

timber on the land and expressed a willingness to settle on those term s and I told her that was all right as far as it went to this timber question and that the Land Company was demanding damages from us and we would have to claim the same damages from her.

Q. 20:- When Mrs. Jones agreed to bera her proportion of the costs and expenses of the suit with Lunsford at the time last stated by you, did she or did she not understand that those expenses were all the costs, expendatures, and outlays that had been necessary in the prosecution of that suit, or did she understand merely that she was to pay her proportion of Mr. Irvine's fee?

A:- She understood that she was to pay her proportionate part of it all because we all went into it together and agreed to pay in proportion to the money that we each had in it.

CROSS EXAMINATION.
By Counsel For Mary E.Jones.

X.Q.1Mr. Slemp, will you please state what induced yourself and Mrs. Jones and Wyatt to make an agreement to pay the expenses of perfecting the title, if such agreement there was?

A:- We held notes payable when the ~~makesxmare~~ title was perfected to the land and, unless we give perfect title to the land, the notes would never have been paid, so we were very much interested in getting the title perfected.

X.Q. 2:- Is there not a decree against the Lunsfords and Wards for the costs of this suit mentioned? If so, why do you assume the obligations of debts of the Wards and Lunsfords in this matter?

A:- We were plaintiffs in the case and the Wards and Lunsfords were insolvent and, being plaintiffs, I supposed

we were responsible for the costs incured by us.

X.Q. 3:- Is it not a fact that you yourself agreed with Mrs. Ward at a certain conference which took place between you and her that you would pay the costs in the above mentioned suit?

A:- No, I never agreed to pay it individually. All the conference I had with Mrs. Ward was in the interest of the whole party. We would some times come together and and some times make me spokesman and I never would do anything without agreeing with the other parties in getting their consent. After the discussion with Mrs. Ward as to her title and ours, she rather yeilded that our title was the best and agreed that, if we would put her to no costs, they would make no defence in the suit. That was the cheapest possible way that we could prove a title. That was afterwards explained to Mrs. Jones and to her husband, James F.Jones, and I never heard her make any objection to it or any part of it and her husband told me as we came from Jonesville, after my last deposition, that she would be willing to pay her part and had told me before.

X.Q.4:- Was this agreement that you made with Mrs. Ward or this conference that you had with her, - was that previous to the decree against the Wards and Lunsfords?

A:- Yes, it was. Mr. Irvine, our attorney, was present on that occasion.

X.Q. 5:- When Mrs. Jones, as you say, agreed to pay her proportion of the costs of perfecting the title to the said land, was that agreement previous or subsequent to the suit which she now has pending against yourself and Mr. Mills?

A:- O! yes, it was long prior to the suit against me and Mills.

X.Q. 6:- Now, did she ever authorize you to make any such agreement with Mrs. Ward that, if she, Mrs. Ward, and others would not defend the suit in perfecting the title to the said land, that she, Mrs. Jones, would pay her proportional part of the costs?

A:- Mrs. Jones came to me frequently before the institution of the suit against the Wards and requested me to go forward and try to have the title of the land perfected and said she was willing to bear her part of the burden. I did go forward with a great loss of time and expenses of money of my own to try to get the land title perfected. This expense of cost in the Ward suit was the least possible cost that could have been made and accomplished the purpose for which the suit was entended and I so expressed it to Mrs. Jones afterwards and she expressed herself well satisfied with it. She seemed to be well pleased that the thing was wound up in such short order and at such little expense.

Obj. Mary E.Jones objects to this as irresponsive to the question.

X.Q. 7:- You said in your answer to a previous question that the Wards and Lunsfords are insolvent and in case they are insolvent that yourself, Mrs. Jones, Mills, and Wyatt would be responsible for the costs: now, is this not an assumption on your part that they are insolvent?

A:- It is mere hearsay. I never investigated it, but Mrs. Ward's land was sold from under her under a deed of trust and the land that Lunsford lives on comes through his wife and I do not suppose he could be reached on that. That thing was talked about and it was considered and the best information we could get was that nothing could be made out of them

at all, unless we could get them to voluntarilly come and pay something and that they seemed rather slow about doing. They have never been paid anything. I know that the land was sold under a deed of trust and that the land Lunsford lives on comes through his wife.

This answer is objected to because hearsay. Jones, Atty.

X.Q. 8:- Now, will you not state if it is not a fact that you have Mrs. Jones' agreement to pay a part of these costs mentioned confused and also talks that may have been had in regard to a compromise that was at one time talked of in reqard to the timber t aken from the disputed 63 acre tract whereby, if the compromise could have been satisfactorially effected, she might have been willing to pay some proportion of aaid expenses?

A:- No, sir, I have not gotten it in any way comfused. The suit for the perfecting the land and these expenses incured is an entirely diferent thing from any question of the timber question.

Further this deponant saith not.

Also the deposition of J.B.F.Mills, introduced by counsel on behalf of himself of himself and C.Slemp, a witness of lawfull age.

PRESENT R.T.Irvine, C.H.Jones, and counsel for Mills and Slemp. The witness,being duly sworn, deposes as follows:-

Q. 1:- State your name, age, occupation, and residence, and state your connection with these suits.

A:- My name is J.B.F.Mills; age 41; residence Washington County Virginia; occupation farmer; and I am a party to these suits.

Q. 2:- Please state what, if any, agreement with regard to the timber taken from the disputed land you and Col. Slemp entered into with Mr. Gerow's Company; on what, if any, condition such agreement was made; and what the consideration was for making such agreement.

A:- Col. Slemp, Capt. Gerow, Mr. Irvine, and myself were present in this office and Col. Slemp and I were making an effort to get this money from Capt. Gerow or his Company and the question of timber having been removed from this disputed piece of land was agitated between us. As to reaching a permanent agreement at that time between us, I do not think we did before I want away. As I remember, the conference broke up with the understanding that Col. Slemp would see the parties who had sold us the land and see if they would bear a part of the loss of the timber and, in that event, there could be a permanent settlement reached. The consideration, as I understood, was to avoid a lawsuit and to get at a settlement of our own together with a settlement with Jones and Wyatt.

Q. 3:- Capt. Gerow's impression from his deposition appears to be that you and Slemp agreed absolutely to give his Company credit for the value of the timber regardless of the consent of Mrs. Jones and Wyatt to help you bear the loss. He has also stated that the consideration which moved you and Slemp was, at least in part, the fact that you felt that the loss of the timber ought rightly to be born by yourselves. State whether he is right in these two respects.

A:- I never did feel nor beleive that it was right for Col. Slemp and myself to bear the loss of that timber as we had no posession of the land whatever and no way of stoping the parties who were trespassing on that disputed land, but

argued with Capt. Gerow at that time that I beleived that his Company would be responsible if the law-suit was entered into at that time, to which he protested. I also argued the point at the time that, if we were responsible, there was no question but that the parties who sold to us were responsible. Col. Slemp urged Capt. Gerow, as I remember, to pay all but $150.00 of his $504.00 note and the other note of $194.00 due on the Wyatt overlap, leaving a sufficienksy in the hands of Capt. Gerow's Company to be settled in reference to the timber as soon as an adjustment of the matter could be had between ourselves and Mrs. Jones and Wyatt. This Capt. Gerow refused to do, saying that that was not a permanent settlement of the thing, and thereupon they discussed the matter of getting a lumber man to go upon the ground and measure the timber and see what the damages realy were, but, as I remember, no agreement was reached in regard to the thing. I think Col. Slemp contended for having more than one man to go and examine the timber and, if they could get a just report of its value, after our settlement with the Joneses and Wyatt, we would then make settlement with Capt. Gerow without litigation. I got the impression from Col. Slemp's conversation that he knew and understood who the man was that bhey were getting anf he proposed to get another man or two other men to go with the man and value the timber and the reason why I was willing to get through the thing in that way was expressly for the purpose of ~~fighting~~ avoiding a law-suit and with the assurance that the Jonses and Wyatt would at least help bear a part of the expenses or loss of the timber.

This answer is objected to by counsel for Mary E.Jones so far as it relates to what the witness said that he argued

that, if Slemp, ~~Mills~~, and himself were responsible for the timber taken, that the parties who sold to them would also be responsible, because a mere opinion of the witness is immaterial and irrelevant. C.H.Jones, Attorney.

The Southwest Virginia Mineral Land Company, by counsel, objects to so much of the above answer as seeks to give an argument between Capt. Gerow and the witness and Col. Slemp on the ground that it was immaterial and hearsay. R.T.Irvine,Atty

Q. 4:- State whether or not J.M.Wyatt was present at the conference refered to by you.

A:- It occurs to me that I saw Wyatt in town that day, but whether he was present, I am not sure. It seems to me that there was somebody else present. I am not sure that anyone was present, except Capt. Gerow, Mr. Irvine, and myself. Possibly there were people coming in and going out.

Q. 5:- State what, if anything, at the conference above mentioned Col. Slemp daid to Capt. Gerow as to giving credit for the timber.

A;- Col. Slemp said he would give credit upon Capt. Gerow's or his Company's note for whatever amount Jones and Wyatt would pay, but he did not beleive that we were responsible for any of it. At the breaking up of the conference, I left my interest in the affair in the hands of Col. Slemp, who was to see Jones and Wyatt.

CROSS EXAMINATION
By R.T.Irvine, attorney for Southwest Virginia Mineral Land Company.

X.Q. 1:- Were you present during the whole of that conference?

A:- I think Col. Slemp and I came up together and went

away together and, if I went away, I have no recollection ofit.

X.Q. 2:- Is it not a fact that the parties were together off and on several times during that day and that you were present only a part of the time?

A:- I do not remember any other conference taking place that day, excppt the one refered to. I think I met Capt. Gerow on the street and he and I may have talked about the matter, but to have a conference between us, there was no other that I know anything about.

X.Q. 3:- I will ask you,Senator, to try to refresh your memory on this point and, having done so, whether it is not a fact that during this conference you were in and out of my office several times and were present only a part of the time that Capt. Gerow and Col. Slemp were discussing this subject?

A:- If I went in and out of the office, I have no recollection of it, Mr. Irvine, and the reason I feel pretty sure of it is that I remember Slemp looking after me and bringing me up here and we were in conference here until we broke up and Slemp and I went out to the Intermont Hotel. That is my recollection distinctly. I think I do remember someone calling Mr. Irvine, may be diferent p arties, but I do not think he went further away than out into his hall.

X.Q.4:- Whose duty did you regard it to perfect these titles?

A:- I thought it was the duty of Jones and Wyatt to do so, but, while thinking it that way, I thought it was the duty of the parties who were in posession of the land to keep trespassers off of it and I so urged Mr. Irvine on being that there were trespasses being committed on the land. The reason I beleived that was the sale of the land was made to

Capt. Gerow's Company immediately after the purchase by Slemp and me from Jones nad Wyatt and whatever posession of the property was delivered to us by Jones and Wyatt we turned over to ~~Jones and Wyatt and~~ the Company and it is my distinct recollection that I told the parties to whom we sold the land that it was represented by the parties from whom we bought that it was only a shade of question and could be easily settled about this overlap.

X.Q. 4:- When you spoke to me, please state what I replied on this subject on behalf of the Company, if you can recall it.

Slemp and Mills, by counsel, object to any answer made to this question, unless it show an ~~omission~~ admission by the said Land Company, because otherwise hearsay.

A:- I do not remember all that occured between Mr. Irvine and myself in reference to that so as to give a connected statement of it, but I do remember that he insisted that the title was to be perfected by us people and I insisted that it was his duty to keep trespassers off of it.

X.Q. 5:- Is it not a fact that I notified you that the Company would assume no controll or act of ownership whatever over the land and would look to you and Col. Slemp to perfect the title and protect the timber, but that you could use the name of the Company in bringing the suit, if desired??

A:- My distinct recollection is in that conversation, when you mentioned the fact first to me that timber was being taken from the land, I think it was the first conversation, that I asked you how we could do anything in keeping trespassers off of the land or in any way controll when we had no possession and no title in us, but, if it had to be settled by a

suit, it had to be settled in the name of the parties and I asked you how there could be any suit brought, except in the name of the Company, and if we were permitted to do so. Your reply to me was, as I have the distinct impression, that you would have to communicate with the Company in reference to that point. Some time afterwards, I have the impression that I asked you about it again and finally, but how long after that I can not tell, you said to me that it would be all right to bring the suit in the name of the Company.

REDIRECT EXAMINATION.

Q. 1:- Please state whether or not in the conversations just mentioned by you Mr. Irvine took the position that his Company was not in possession of the disputed overlaps and whether or not it be a fact that their claim of not being in possession is a new one disigned for use in this pending litigation.

This question is objected to as argumentative and leading

A:- I do not remember that there were any objections urged by Mr. Irvine as to possession, but it is distinct in my mind that he told me that he had a man on the property still outside of the overlap and that he had made some effort, - I can not tell just how that was - that the man that he had there was to keep trespassers away, but that in this instance he had made a failure to notify him; that the note coming to us was not to be paid until the title was perfected.

Q. 2:- Now that your recollection has been freshened, please state whether or not Wyatt was present at the time of the conference in Mr. Irvine's office between Gerow, Irvine, Slemp, and yourself.

A:- I am very sure that he was not here and the only reason that a question was raised in my mind about it in giving my statement a while ago was that I had heard that Mr. Gerow had stated that he was here, but now I am sure that, if he did state that he was mistaken.

Also the deposition of R.T.Irvine, introduced on behalf of the Southwest Virginia Mineral Land Company, a witness of lawfull age, who being first duly sworn, deposes as follows:-

A: My name is R.T.Irvine; age 31 years; occupation lawyer; residence Big Stone Gap, Virginia. I am the attorney for the said Land Company and was the attorney in the suit in Lee County vs. Nelson Lunsford et al. I wish to say in advance that I regret very much the necessity of giving my deposition in this matter, but I have been so connected with it as to render it necessary in my judgement to do so. I have been the attorney in Wise for the said Land Company since 1890. My office for the Company was at first altogether and has all along cheifly been the collection of lot notes in Big Stone Gap. Some time in 1891, I think in the Summer time, some one of the parties connected with these present suits, I believe it was Mr. Mills, came to me and told me there was trespassing going on on some lands in the Wild Cat Valley near Ward's Mill. He explained to me somewhat the nature of the controversy, which was the first I knew of it. I wrote Capt. Gerow and he either wrote me or was here in person shortly after and told me that his Company did not propose to do anything about it, that Mills and Slemp were to make the title good to them, and his Company did not consider the land theirs for any purpose until the title was perfected and a deed of

general waranty made by Mills and Slemp. I communicated this fact to Mr. Mills. I remember that about that time Mr. Wyatt and I think also Mr. Frank Jones came to see me, perhaps with Mr. Mills, and I repeated the same thing to them. I can not say positively when the transaction with old man Meredith occured. I was at Ward's Mill one day on business for other clients and he came to me saying that he understood I was the attorney for this Land Company and wanted to know if it was all right for him to live in the house and cultivate the cleared land on the place. I knew that the interest of the Company demanded a tenant and I told him to go ahead and live on the land and cultivate it as the Company's tenant and, if he could pay any rent, it would be all right. I am not sure whether I knew at that time of this dispute, but I do not think it occured to me at that time in talking to Meredith or that any reference whatever was made to these disputed strips. There were occasional references made to this matter by Capt. Gerow on the one hand and Mr. Mills on the other up to some time in '92, I think in the Spring, as that was the time Capt. Gerow usually came out here. On the occasion of one of his visits about that time he explained more fully to me the nature of the controversy and said that Mills and Slemp had employed or would employ counsel. I think he had, prudently McDowell in his mind to take ahold of the matter and test it and he said to me that he would employ me for his Company as assistant in order to get the matter worked up and cleared off and settled one way or another. I think perhaps he and Mr. Mills were together in my presence discussing the matter on this same visit and he told Mr. Mills that he recognized no no responsibility in the matter on account of his Company

either for the litigation or for the timber taken, that he did not buy a law-suit, and,to the best of my recollection, told him then that he did not regard his Company in possession of the land until it had been deeded to his Company by ~~the~~ general waranty.

Some time later Col. Slemp came to me and said that the matter had dragged badly and that he and Mr. Mills had failed to secure counsel and asked me whether I would be willing to undertake the whole case by myself, if the parties interested would pay me an additional fee to what I expected to get from the Land Company. I told him that I saw no impropriety in my doing so and that I did not suppose the Company would object and named $50.00 as an additional fee. Some time after this, Col. Slemp came to my office with Messrs. Wyatt and Frank Jones, the husband of Mary E.Jones, and concluded the arangement with me. I think this was in the Fall of '92. I do not remember whether at this time I had notified the Company that this action was proposed to be taken, but I think I had. It was about this time, at any rate, and there was no objection raised to this course on my part. I do not remember now whether Capt. Gerow was here in person ~~about~~ cut that time or whether or the matter was discussed by correspondance. I think Capt. Gerow was here and the question of the liability of the Company for costs was discussed by us, or, else I had this in my mind independant of such discussion. At any rate,I remember distinctly when this conference occured between Col. Slemp, Messrs. Jones & Wyatt, and myself that the liability of the Company for costs was discussed and I told them they must look out for this. In case we lost the suit, judgement would go against the Company for costs and in case we won that

the Wards were insolvent. This latter fact I knew from having obtained a judgement against them in Lee County on a claim and having been unable to make anything out of it. They agreed on that occasion to pay these costs themselves in the same proportion in which the attorney's fee was to be paid, to-wit, in proportion to the amount of money that was going to each one. Col. Slemp was the spokesman and the others assented to the best of my recollection. There has arisen a contest on this point between Col. Slemp and Mrs. Jones. My positive recollection is that Mr. Jones was present, that all parties assented, but as Mr. Jones is rather hard of hearing, it has occured to me that his misunderstanding might be attributable to this fact ; but to the best of my belief he understood that the costs of the suit were to be provided for as well as a fee of $50.00 to me.

There was a conference late that Fall, that is the Fall of '92, or possibly in the early part of '93 on the land in dispute which I attended. Col. Slemp, Mr. Wyatt, one of Mrs. Jones sons, and several of the Wards and Lunsfords were present besides myself. I wanted to familiarize myself with the location of the various tracts of land involved and I think the general object of the conference was to arive at some idea of the land, of damage done on the land , and the amount on the respective tracts, and to learn if it were not possible to recover the money which the Wards were to get for this timber. I had understood that the timber had been sold to a Mr. Richmond who had saved it up and I heard had not paid the money. The question of damages was at that time being discussed by all parties and the effort was to try to arange some plan of compromise or agreement with the Wards whereby

on our side we would save some of the ~~kimbar~~ money which the timber had brought. I do not remember just what agreements were made between the other parties, but I know that, acting for himself and Mills and Mrs. Jones and Mr. Wyatt, Col. Slemp was doing all he could to arange some plan of recovering something, if possible, from the Wards on account of this timber. I remember that I insisted that the Land Company would claim damages and was advising a compromise all around. Mrs. Wards land was mortgaged, including the overlaps, for what appeared to be its full value to Flanary & Brother and she was a widow with several young children and whatever agreement was made with her by Col. Slemp was made for the benefit of Wyatt and Jones and I think with their knowledge and consent, though I was not present at all their conferences on that occasion.

After getting the full data on both sides of the title in dispute, I brought the suit in the name of the Southwest Virginia Mineral Land Company, but it was understood by all parties that the real plaintiffs were Messrs. Mills and Slemp and Wyatt and Jones. Neither Capt. Gerow nor Mr. Myers knew the contents of the bill. They were necessarily parties defendant because title to the Wyatt tract stood in their names and I had them convey to the Company and file an answer under oath ~~in~~ to the bill. I wrote them a letter explaining the nature of the matter, but I do not think I sent a copy of the bill at that time, if at all. They understood that the other parties mentioned were the virtual plaintiffs, while their Company was only a formal plaintiff.

Next came the meeting in my office in April '93 about which there has arisen some diferences. There have been so

many of these various conferences that it is ~~difference difficulty~~ difficult for me to remember clearly what occured at all of them. The best recollection I have, however, of this one is that after a good deal of discussion as to who was liable and as to the real amount of the damage done it was agreed on between Capt. Gerow and Messrs. Slemp and Mills that the damage should be estimated by arbitration and whatever sum was found should be credited on the notes due from the Company in the proportion to the amount due on each tract. My recollection differs somewhat from that of Capt. Gerow on the one side and Messrs. Mills and Slemp on the other. I think there was no positive agreement arived at on that day before the parties separated, but the understanding was that, if the matter was subsequently taken up and arbitrated, then whatever sum should be found as damages should be placed as credits on the notes. I think the plan discussed was to let one man go count the timber and fix its value and I think that man, if anyone was named, was Mr. Dutton. I am sure, at any rate, that he was in my mind. Col. Slemp objected to this, but said he was willing for three men to be chosen. I think we all separated without coming to any definite conclusion, but afterwards Capt. Gerow wrote me that he would be willing for three men to act, if Mr. Taggart were made one of the three. Col. Slemp came up again and I mentioned Mr. Taggart, but for some reason Mr. Taggart could not act and I told Col. Slemp I would take the responsibility of agreeing on some other man and we agreed on Mr. R.E.Bratton, he having named Mr. Carmichael and we Mr. Dutton. One feature of the conference at that time was the additional costs of ascertaining the amount and value of the timber and of

having it arbitrated. I am not sure that it was finally agreed on this day or whether I subsequently agreed for the Company that it would pay one-half of these costs and charges, the other half to be born by the other patties in conjunction, but I feel quite sure that the agreement between the Company on the one side and Messrs. Mills and Slemp on the other was that, if the matter was arbitrated and these costs and charges incurred, then the note should be given the credits under discussion. I remember that Col. Slemp had great difficulty in getting the Wards on the one side to stick to the agreement to pay a part of the damages and Mrs. Jones on the other, and I did all I could consistently to aid him in bringing about such agreements. The credit spoken of above is the amount spoken found by the arbitrators as damages.

To further aid Col. Slemp and Mr. Mills in securing something from the Wards and Lunsfords, I brought law-suits against them at the June term '93 in Lee County also in the name of the Southwest Virginia Mineral Land Company, seeking to recover the value of the timber taken. There was no agreement arived at of any kind on this point during the conference above mentioned by me at the Wards, and it was with a view of getting them and the Lunsfords to pay something that these suits were brought. The Lunsfords were able to pay and we especially wanted to force something from them. It was not the intention of Col. Slemp and Mr. Mills to press the widow James Ward in case it should be found that she could not pay anything. This had the effect of bringing the Wards and Lunsfords once more to talk of compromise and the suits in Lee County were continued by consent and no action has yet been taken on them. These suits were also virtually the

suits of Slemp and Mills, as the Mineral Land Company knew nothing of them.

The matter dragged along during the most of the Summer of '93 waiting for Mr. Dutton to make his report. He was bothered a great deal in tracing out lines and we had to send a surveyor down there to trace out lines, but finally he got his report finished and I notified Col. Slemp that we would go ahead and have the value placed on the timber by the three men before mentioned. On July 14th 1893 all the parties met here to conclude the matter. Col. Slemp, Mr. Wyatt, Mr. Chas. H. Jones, son of Mary E. Jones, John Lunsford, and the widow Ward. Col. Slemp acted for Mr. Mills and I understood that Mr. C.H.Jones represented his mother. The arbitrators placed their valuation on the timber, Mr. Dutton having previously made his report as to the quantity and diferent sizes of timber. I do not think that the matter of the Company receiving the credits which should be arrived at was discussed, but it was certainly my understanding and I thought was assumed by all the parties at that arbitration that such was the purpose of the arbitration. I knew of no other reason why it should be arbitrated. There never was a doubt in my mind that the sums found should be placed as credits. I was worried at the low valuation, as I thought, placed on the timber by the arbitrators, as from my knowledge of timber contracts that had been made in the same section I beleived that the prices set by them were entirely too small. I perhaps showed some temper on this point, but stated in the meeting that, as I had agreed to go into the arbitration for the Company, that we would stand by it and I then turned and asked the various parties interested if they would stand by it and Col.

Slemp said he would for himself and Mills. Mr. Wyatt said that he would and to the best of my recollection Mr. C.H.Jones gave assent for his mother. He had said but little, though, to the best of my recollection, I asked him the direct question whether he represented his mother and he said yes. As to the other point, I will not be very positive, but it is to the best of my recollection that when I asked the other parties if they would stand by the arbitration, he gave his assent. He certainly did not dissent. Mrs. Ward and John Lunsford also said they would try to fix up their part. Every body seemed far more pleased at the outcome than I did. I had expected the damages to be placed at from $250.00 to $300.00 and when they were placed at only about $160.00 all the parties present seemed exceedingly well satisfied, except myself. At this point it was late in the day and, as most of the parties present lived at a good distance, I could not detain them to fix up the writings and do what I intended to do, namely then and there draw up the release papers and other deeds and papers and give drafts for the money.

I will state in this connection that the money to settle all these claims was in bank, perhaps all of it in this bank, certainly some here and some in Norfolk, as I was notified by Mr. Myers. I had charge of the collections of the Company and had collected condiderable sums which Mr. Myers had directed to be held ready to make these settlements. All the money transactions of the Company passed through his hands, or rather through the treasurer of the Company in his office.

There had been no positive agreement to settle up to this point while the Barbara Ritchie suit was still outstand-

ing. It had been expected that it would be settled at the June '93 term of the Lee Circuit Court, but it was not. After this arbitration, Col. Slemp spoke to me on two or three occasions about getting the money paid and I told him I was not authorized to pay it on account of the Barbara Ritchie matter. He talked like he would bring suit, if the money was held back until that suit was settled, and I advised Mr. Myers that it would be best to settle and not wait, as I thought Messrs. Mills and Slemp would bring suit rather than await the decission of the Ritchie matter and my view of the law was that they could be forced to pay and rely on the general waranty which was to be given by Mills and Slemp in the new deed. I was then advised to make a settlement, after first getting the releases and the general waranty, deed, and I so notified Col. Slemp who had the matter in charge for all parties on that side. I was at Circuit Court at Wise Court House the most of September and in October I entered a canvas as candidate for representative and was absent nearly all the month of October and until the November election and did not see Col. Slemp to make the calculations involved in the matter and I think it was late in November before we finally got together. On October 21st, I drew on the Company for $22.05 to pay Mr. Thacker for surveying. I drew for $24.00 to pay Mr. Dutton and on November 27th I drew for $92. 65 in favor of Mr. Wyatt and $64.44 in favor of Col. Slemp as their respective portions of what was due on the Wyatt tract, they having alowed the credit for the proportion chargeable as damages on his tract. I drew also for $20.70 in favor of Col. Slemp which he assigned to me as settlement of what was due me on account of the Wyatt tract

and also drew for $43.80 on the same day on account of the Jones land, this being a settlement of my fee and the costs I had incurred chargeable to the Jones land in the distribution as we had figured it. The propper releases were delivered pertaining to the Wyatt tract and I had written ~~and~~ up and delivered to Col. Slemp the propper releases to all parties pertaining to the Jones tract and also the new deed of general waranty.

At this point I discovered, I think for the first time, that there was a probability of trouble with Mrs. Jones. Col. Slemp told me that she had signed and acknowledged the release deed for her part, but that her husband refused to sign it on account of 25 trees which he still said he had the right to select or to recover damages for. I did not understand from him that he and Mills would refuse to carry out the agreement, even if Mrs. Jones and Mr. Jones did fail to execute and deliver these releases. I think there was nothing whatever said on this point, but I acted on the assumption that these credits would be ~~paid~~ made and my one reason for not giving a draft for the balance of the money was the failure to deliver the Jones releases. Col. Slemp on this occasion urged me to give him ~~the~~ a draft on the Company for $100.00 on account, in addition to the $43.80 so that he could settle off with Mrs. Jones. I think it was the balance due on the note for $252.50, but I told him that I had no authority to draw without the release deeds and I asked it as a favor of him to let me have the $43.80 and I wrote to Mr. Myers explaining it, as a personal favor to myself to pay this much on account, as I was then on the eve of leaving for Richmond and needed all the money I could get.

I told Col. Slemp that I would take the papers in this case to Richmond with me and, if he would send me down by mail the releases and general waranty deed properly executed, I would hold them in escrow and send him drafts in the proportion that we had figured due to each party and in that way we could get the matter settled up without longer keeping the parties out of their money. The Company had the money ready all the time and were expecting to make these payments. Col. Slemp did not send me the papers and when I returned home for the Christmas holadays he came to see me again and said he was afraid he would have trouble with Mrs. Jones, that he did not think she would deliver the release deed, as the amount which had been charged to her proportion was more than she had counted on. After Mr. Jones had first refused to sign on account of the trees, I drew up, before leaving for Richmond, on the last of November, a diferent paper from the first one, giving him recourse on the Wards for the value of the timber, which he refused to sign also. I think I told the Col. at this conference, Christmas, that I would see Mr. Myers in Richmond shortly and would mention it to hin and would suggest that we leave Mr. Jones out and make the settlement on the release of Mrs. Jones. I did this and Mr. Myers said he would leave it to me. I do not know whether I notified Col. Slemp of this before the suit was brought or not. I was very busy in Richmond during the month of January and these suits were instituted during that month and then the whole subject was dropped.

I can not recall at any time during this long course of transactions that Col. Slemp told me that his and Mills' acceptance of this arbitration and giving credits for the dam-

age was conditioned on Mrs. Jones giving them credit. My understanding all along certainly was that, as between the Company and Mills and Slemp, there was no doubt about the matter. I was aiding Col. Slemp in avery way I could to get the other parties to indemnify him in part on the loss. He had spent a great deal of money, time, and trouble over the matter and I think I never saw a man work so persistently to get a matter settled.

In reference to my notifying Messrs. Mills and Slemp that the Company was purposely remaining out of possession of this land, I can not say that I ever used these exact words, but my position was unequivocal all the time that the Company always had refused and would refuse to do any action that would recognize any responsibility on their part for the land or any trespass on it until it had been turned over to them with a new deed of general waranty and the value of the land as it stood on the day of their original contract accounted for.

Counsel for Mills and Slemp object to so much of the foregoing ~~breif~~ brief as relates to the contents of the letters passing between witness and the members of the said Land Company, also to all statements of what Mr. Gerow said, because hearsay.

CROSS EXAMINATION.
By Counsel For Mary E. Jones.

X.Q. 1:- Do you remember when Col. Slemp asked you for the draft to pay off the balance of the $252.50 note due to Mrs. Jones ~~and~~ whether he said how much or about how much it would take to pay her off on that note?

A:- In my statement above, I perhaps misled you, but you will recall that I said I supposed it was for settling off the

$252.50 note. Col. Slemp did not, as a matter of fact, mention that note to me, but said he owed Mrs. Jones something on another matter, that is outside of the $315.00 note, and that he wanted to pay her this. He never did at any time mention the note to me or indicate how much he thought was due on it.

And further this deponant saith not. R. T. Irvine

Virginia, Wise County, to-wit:

I, H.C.McDowell Junior, a notary public in and for the county aforesaid in the state of Virginia, certify that the foregoing depositions of J.W.Gerow, J.B.F.Mills, C.Slemp, and R.T.Irvine were taken, subscribed, and sworn to before me at the time and place and for the purposes mentioned in the caption hereto anexed.

Given under my hand this 6 day of June 1894. H C McDowell Jr

Time of taking depositions of Gerow and Irvine 18 hours, at 75cts. per hour, total $13.50.

Time of taking depositions of Messrs. Mills and Slemp 8 hours, at 75cts. per hour, $6.00.

$19.50 payable to Liske Irvine, stenographer - H C McD Jr

Mary E Jones
vs
Mills & Slemp
and
Mills & Slemp
vs
S. W. Va Mineral Land Co

Depositions

June 8. 94
Received from
H C McDowell. Jr
& filed
Filed June the 8th
1894 A B Mansy
Clerk.

Agreed Evidence as to Taxes

It is hereby agreed and admitted to be a fact that since 1888 the South West Virginia Mineral Land Company has been assessed with and has paid taxes on the entire Mary E Jones ~~tract~~ of 284 acres. That is ~~that~~ said Company has been assessed with and has paid taxes on the 63 acres of disputed land as well as on the balance of the tract.

It is further agreed that this ~~statement~~ is to be treated as evidence in due form of the above fact.

South West Va Mineral Land Co
by R. T. Irvine Atty
Mills & Slemp
by H C McDowell Jr

Mills v Slemp

vs

S. W. Va Mineral Land Co

&

Mary E Jones

vs

Mills v Slemp

Agreed Statement of Fact

West. Johnston & Co., Richmond.

The Commonwealth of Virginia,

Seargent · city of Norfolk Va

To the ~~Sheriff~~ of the ~~County of Lee,~~ Greeting:

WE COMMAND YOU, That you summon South West Va Mineral Land Company

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the First Monday in February, 1894, to answer a bill in Chancery, exhibited against &c in our said court by J. B F Mills and C Slemp

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the 17th day of January 1894, and in the 118th year of the Commonwealth.

A B Munsey Clerk.

Executed this 19th day of January a 0 1894 by serving a copy hereof on Barton Myers for the South West Virginia Mineral Land Company. the said Barton Myers being the President of said Company, and the said Barton Myers being in and a resident of the city of Norfolk Va at the time of such service

J. E. Murphey deputy for D. L. Dorman Sergt City of Norfolk

J. F. B. Mills et al

vs. { SUBPŒNA IN CHANCERY.

S. W. Va Mineral Land Co

Duncan & Hazlett p. q.

To 1st February Rules 1894

Circuit Court.

Executed by delivering an office copy of the within Spa. to Barton Myers, the President of the South West Virginia Mineral Land Company. January 19th a 0 1894

J. E. Murphey deputy for D. L. Dorman Sergt City of Norfolk, Va.

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